

Ord. 2020-08-865D

237865

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT is made and executed on this 12 day of August, 2020, by and between the **CITY OF PADUCAH**, a Kentucky city of the second class, hereinafter referred to as the "City", and **WEYLAND VENTURES DEVELOPMENT, LLC**, a Kentucky limited liability company, hereinafter referred to as the "Developer."

WITNESSETH:

WHEREAS, the City has established a Tax Increment Finance District (TIF) to promote and enhance the economic development of designated properties located along and within the City's downtown riverfront area, and to utilize the incremental revenues generated therefrom to pay the infrastructure expenditures and other costs that are incurred in relation to the development; and

WHEREAS, the City holds fee title to a 2.88-acre tract of property located at 133 Broadway Street, which tract is bounded by Water Street, Broadway Street, North Second Street and Jefferson Street, all of which is located within the TIF District; and

WHEREAS, in April of 2019, the City and the Developer entered into a preliminary agreement to formulate a plan for the development of the 2.88-acre tract that would enhance the revitalization of the City's riverfront, and create employment opportunities and tax revenues from the businesses that will be operated thereon; and

WHEREAS, the parties have negotiated and approved a development plan whereby the Developer shall construct upon the 2.88-acre tract a boutique hotel, an off-street parking facility, an urban park, a greenspace park, and two mixed-use commercial and residential structures, all of which is generally depicted in Appendix "A" to this Agreement; and

WHEREAS, the parties have agreed to proceed with the development plan as provided under this Agreement, and to perform and comply with the covenants, obligations, undertakings and liabilities that each party has assumed under this Agreement.

NOW, THEREFORE, in consideration of the foregoing premises, and the mutual covenants, obligations, undertakings and liabilities that are to be assumed and performed by the parties hereunder, the parties do hereby covenant and agree as follows:

ARTICLE I DEFINED TERMS

1.1 Defined Terms. Each of the following terms as used in this Agreement shall have the meaning that is ascribed to that term under this Section 1.1.

“Agreement” shall mean this Development Agreement, and all amendments that are made thereto.

“Boutique Hotel Facility” shall mean a hotel facility operated in the manner commonly associated with the generally accepted standards and characteristics of a boutique hotel, the configuration of which shall generally comport with the depiction provided in Appendix “A” to this Agreement, and all improvements made in relation thereto.

“Design Documents” shall mean and include the plans and specifications of the Facilities that are to be developed and constructed under this Agreement, all of which shall be prepared by duly licensed architects and engineers.

“Development Site” shall mean and include the 2.88-acre tract of property located at 133 Broadway Street, all of which is generally depicted in Appendix “A” of this Agreement.

“Downtown Design Standards” shall mean and include the standards, requirements and criteria that are promulgated under the City’s “Design Standards for Historic Downtown”.

“First Effective Date” shall mean August 12, 2020, which is the effective date for the Phase I Facilities as referenced in Section 2.2(c) of this Agreement.

“Greenspace Park” shall mean a public open space that is comprised of soft landscape consisting of vegetation, lawn, public art, and other softscape features, and the Reconstructed Facilities that are designated by the City, the configuration of which shall comport with the depiction provided in Appendix “A” to this Agreement.

“Incremental Revenues” shall mean the incremental revenues, as defined under KRS 65.7045(17), that are attributable to and generated from the developments that are constructed within the TIF District and are pledged in the City and County Local Participation Agreement.

“Mixed-Use Facilities” shall mean and include the mixed-use buildings that are generally depicted in Appendix “A” to this Agreement, and all improvements made in relation thereto.

“Parks” shall mean and include the Greenspace Park and the Urban Park, and all improvements made in relation thereto.

“Parking Facility” shall mean and include the parking facility that is generally depicted in Appendix “A” to this Agreement, and all improvements made in relation thereto.

“Phase I Facilities” shall mean and include the Boutique Hotel Facility, the Parking Facility, the Greenspace Park and the Urban Park, and all improvements made in relation thereto.

“Phase II Facilities” shall mean and include the Mixed-Use Facilities, and all improvements made in relation thereto.

“Public Facilities” shall mean and include in aggregate each and all of the facilities that are to be constructed by the Developer on property retained in fee simple ownership by the City. This includes the Parking Facility, the Greenspace Park and the Urban Park, all of which are generally depicted in Appendix “A” to this Agreement.

“Reconstructed Facilities” shall mean and include (i) a gazebo and horse carriage facilities that are similar to those currently existing on the Development Site, (ii) the reclamation of the historic cobblestone sidewalk preserved in place on the southeast corner of the site, and (iii) the reclamation and relocation of the engraved memorial bricks that are located along Second Street, all of which shall be reconstructed within the Parks as determined by the City.

“Second Effective Date” shall mean tbd, which is the effective date for the Phase II Facilities as referenced in Section 3.2(c) of this Agreement.

“TIF District” shall mean the development area that is subject to and a part of the City’s Tax Incremental Finance District, a plat of which is depicted in Appendix “B” to this Agreement.

“Urban Park” shall mean a public open space that contains hard landscape consisting of decorative pavers, seating, public art and other features that are typically found in public promenades, and the Reconstructed Facilities that are designated by the City, the configuration of which shall comport with the depiction provided in Appendix “A” to this Agreement.

ARTICLE II

DEVELOPMENT AND CONSTRUCTION OF PHASE I FACILITIES

2.1 General Scope of Development. The Developer shall develop and construct upon Tract 1 of the Development Site a Boutique Hotel Facility that comports with the facility that is depicted in Appendix “A” to this Agreement. Simultaneous therewith, the Developer shall develop and construct upon Tract 2 of the Development Site the Parking Facility, the Greenspace Park and the Urban Park (“The Public Facilities”), which comport with the facilities that are also depicted in Appendix “A”. To facilitate the development and construction of the Boutique Hotel Facility, the City shall convey to the Developer all of its rights, title and interest in and to Tract 1 for such consideration as referenced in Section 2.5 of this Agreement. The City shall also convey to the Developer at no cost access rights to Tract 2 and Tract 3 to facilitate the development and construction of the Public Facilities, all of which shall be dedicated to and used by the public at large. All conveyances to be made by the City hereunder shall be subject to the Developer’s full and faithful compliance with the preliminary requirements and commitments that are defined under this Article II.

2.2 Preliminary Requirements and Commitments. The Developer shall fully perform and timely satisfy all of the preliminary requirements and commitments that are provided as follows:

(a) Minimum Design and Building Requirements. The Developer shall ensure that the Phase I Facilities shall be developed and constructed in accordance with the following requirements:

(1) The Boutique Hotel Facility shall be constructed along Jefferson Street, generally as depicted on the site plan attached herein as Appendix “A”. Any substantial changes to the location and the building massing shall be reviewed and approved by Planning Director.

(2) The Boutique Hotel Facility shall contain approximately 60,000 square feet, composed of 40-100 rooms, event space, commercial and retail space,

and typical ancillary hotel support space. Any substantial changes to this program shall be reviewed and approved by the Planning Director.

(3) The building's exterior design shall be consistent with all existing City design and construction standards, including the City's Downtown Design Standards. The building's design shall be reviewed by City staff prior to any formal submissions required under the City's codes and ordinances.

(4) The project shall include an area of public parking on Tract 2, the city-owned parcel, as generally indicated on the site plan attached herein as Appendix A. No less than 100 parking spaces shall be provided as public parking during those times when special events are not occurring. The parking area design shall be reviewed by the Planning Director to the completion of final plans and documents, and may be further refined based upon the design of the Parks.

(5) The Greenspace Park shall contain approximately 11,000 square feet, as depicted on the Site Plan attached herein as Appendix A and shall include the Reconstructed Facilities that are designated for inclusion within that Park as determined by the Planning Director. The design of such space shall be reviewed and approved by Planning Director prior to its finalization.

(6) The Urban Park shall contain approximately 11,000 square feet, and shall include a permanent hardscape promenade along Second Street between Jefferson and Broadway as depicted on the Site Plan attached herein as Appendix A, and the Reconstructed Facilities that are designated for inclusion within the project's Public Facilities as determined by the Planning Director. The design of such space shall be reviewed and approved by the Planning Director prior to its finalization.

(b) Minimum Financial Commitment. The Developer shall commit and expend approximately \$12 million in the development, construction and completion of the Boutique Hotel Facility. This shall include the costs and expenses of constructing the Facilities, professional fees that are incurred in relation to that development and construction, insurance costs, financing fees and costs, and governmental fees and charges that are incurred prior to and during the construction process.

(c) **Critical Completion/Closing Dates.** The Developer shall comply with the requirements that are defined under this section on or before the completion dates that are ascribed thereto, all of which shall be deemed critical deadlines within the term “time is of the essence”:

(1) Within 90 days following the First Effective Date, the City Planning Department shall conduct, in collaboration with the Developer, a public meeting whereby the public is accorded an opportunity to offer recommendations and comments with respect to the development of the Parks, and the location of the Reconstructed Facilities. On advice of those recommendations and comments, and in consultation with the Developer, the Planning Director shall make a determination as to where within the Park the Reconstructed Facilities will be located.

(2) Within 180 days following the First Effective Date, the Developer shall submit to the Planning Director for its review a revised set of design plans for the initial Phase of the project, to include the Boutique Hotel and the Public Facilities, including the location and design of the Reconstructed Facilities. Should extraordinary conditions arise outside of the control of the Developer, the Planning Director may grant an extension for a period of up to an additional 90 days, if so requested.

(3) Within 365 days following the First Effective Date, the City shall transfer its rights, title, and interest in and to Tract 1 to the Boutique Hotel developer, under the following precedent conditions:

- i. The Developer has submitted evidence of financing commitments for the private components of the project.
- ii. The Developer has obtained all necessary city permits, licenses, and approvals required under the codes and ordinances of the City to enable construction to begin.
- iii. The City has submitted evidence that the property is within a state approved Tax Increment Financing District.
- iv. The City has – or has provided evidence of commitment to bring - all utilities required to support the development, to the site.
- v. The City has submitted evidence of financing commitments for the Public Facilities of the project.

Should extraordinary conditions arise outside of the control of the Developer, the Planning Director may grant an extension for a period of up to an additional 180 days, if so requested.

- (d) Within 90 days of the transfer of the property, the Developer shall initiate construction of the Phase 1 Facilities. The Developer shall thereafter utilize its best efforts to complete the construction work on the Facilities within a period of 18 months following the commencement date of the work, unless extraordinary conditions arise outside of the control of the Developer.

2.3 Public Use of the Public Facilities. Developer understands and agrees that the Public Facilities shall be developed, constructed and maintained by the Developer for the benefit of the public, all of which shall be perpetually dedicated for public use. Each of the parties shall have the following rights and privileges to those Facilities, and to use the Facilities for the purposes stated hereunder:

- (a) The City shall have the right to utilize the Facilities for public events and other temporary purposes that are beneficial to its citizens. In relation thereto, the City shall have the right to accord to third party promoters full access to the Public Facilities for the purpose of conducting the events and other purposes that are permitted hereunder; and
- (b) The Developer shall have the right to accord to its employees and patrons the right to park their vehicles within the Parking Facility to facilitate their employment or stay at the Boutique Hotel Facility. However, such use may not be allowed when there is a special permit issued by the City for the temporary use of the Parking Facility for non- parking purposes.

2.4 Reimbursement of Costs. The City shall reimburse the Developer the actual total costs that the Developer has incurred in the development and construction of the Public Facilities, as provided under Article III of this Agreement. Such costs shall include the costs and expenses of constructing the Facilities, professional fees that are incurred in relation to that development and construction, insurance costs, financing, performance bonds and other construction-related fees, loan fees and carrying costs, and governmental fees and charges that are incurred prior to and during the construction process. The City Planning Department shall provide the Developer no later than the midpoint of the design plan process a not-to-exceed budget for the Public Facilities.

2.5 Payment of Deferred Purchase Price. The parties stipulate and agree that the estimated fair market value of Tract 1 is \$ 141,000, less any costs as specified in Section 5.4, which shall be the designated purchase price of that property. The Developer shall pay to the City the designated purchase price in 5 consecutive equal installments, with the first installment to be due and payable on the sixth anniversary following the issuance of a Certificate of Occupancy of the Phase I Facilities, with the remaining payments in 4 annual payments each 12 months subsequent to the previous payment.

ARTICLE III

CONSTRUCTION REQUIREMENTS OF THE PUBLIC FACILITIES

3.1. Submittal of Design Development Plans. Within 180 days following the First Effective Date, the Developer shall submit for the City's review and approval the Design Development Documents that define the Public Facilities, including the location and design of the Reconstructed Facilities. Such submission shall include a cost estimate for the Public Facilities.

3.2 Submittal of Final Plans. Within 120 days of written notice to proceed on the Design Development Plans, the Developer shall provide to the Planning Director for its review and approval the final Construction Documents for the Public Facilities. Within 60 days of written notice to proceed from the City, the Developer shall submit the construction agreements it proposes to execute with designated contractors and subcontractors in relation to the construction of the Public Facilities.

3.3 Prosecution of Construction Work. The Developer shall diligently prosecute the construction work on the Public Facilities in substantial accordance with the approved Construction Documents, and shall utilize its best faith efforts to complete the construction work within the time periods designated in this Agreement. The Developer shall keep the City informed on the status and progress of construction work, and the occurrence of any event that causes a delay in the construction process. The Developer shall perform the construction work in a good and workmanlike manner, all of which shall fully comply with all existing building codes and other governmental laws.

3.4 Protective Measures. The Developer shall ensure that the construction work is carried out in a reasonable and orderly manner, with due regard for the interests and safety of the general public. Unless otherwise approved by the City, the Developer shall ensure that all construction work in Phase 1 and Phase 2 is performed between the hours of 7:00 a.m. and 7:00 p.m., and that no construction work be performed on any Sunday or holiday. The Developer shall cause a solid construction fence to be constructed along the perimeters of the

construction work that contains public art and window cuts which promote the aesthetic appearance of the fenced structure. The Developer shall also maintain and preserve a portion of the existing parking facilities as designated by the City, and accord to the public the right to utilize that area for parking purposes, for as long a period as reasonable during construction.

3.5 Construction Costs. The Developer shall assume and timely pay all of the costs of the construction work, including but not limited to labor and material costs, permit and inspection fees, equipment rentals, and costs attributable to the services provided by its architects, engineers, general contractors and subcontractors; provided, however, the Developer may withhold an agreed upon retainage on the construction work, subject to the limitations that are defined in Kentucky's Fair Construction Act. Upon completion of the construction work on a Facility, the Developer shall obtain final lien waivers from the architects, engineers, contractors, subcontractors and material providers who provided the work and materials on the Facility that effectively release their lien interests against the Facility and the Development Site.

3.6 Accounting on Development and Construction Costs of the Public Facilities. The Developer shall maintain an accurate accounting of all of the actual costs that Developer incurs in the development and construction of each, and retain all invoices, purchase orders, charges and other written documentation that evidences those costs. Upon the City's request, the Developer shall provide to the City all of the accountings that Developer has maintained under this Section 3.6, together with the supporting documents that are referenced herein.

3.7 Design Documents – Remedy of Deficiencies. The Developer shall ensure that all Design Documents used in the construction work were prepared by competent and duly licensed architectural and engineering professionals in accordance with generally accepted professional standards and construction practices, and that the Design Documents are free of any material errors and deficiencies. The Developer shall assume full responsibility for any defects or deficiencies that are contained in the Design Documents, and for any structural or other inadequacies and deficiencies that result from those defects and deficiencies. Upon discovery of any defect or deficiency, the Developer shall diligently and timely perform all remedial work that is required to resolve the defects and deficiencies. It is understood and agreed that the City's acceptance and approval of the Design Documents shall not render the City liable for any defect or deficiency in the design Documents, all of which liability shall be allocated to and assumed by the Developer. The Developer shall indemnify the City and hold it harmless from any and all claims, losses and liabilities that

relate to or arise from any defect or deficiency in the Design Documents, regardless of the City's acceptance and approval.

3.8 Material Change Orders. The Developer shall not issue any material change order to the Design Documents without the Planning Director's prior written approval. In the event the Developer is desirous of implementing a material change order, the Developer shall provide the Planning Director with a written statement that describes the proposed changes to be made, and the additional costs or savings that will result from the proposed changes. The Planning Director shall have the right to reject a material change order if (i) the proposed material change order constitutes a substantial deviation to the Design Documents as determined by the City; (ii) the Developer does not have sufficient funds to cover the additional construction costs attributable to the proposed material change order, or (iii) the Developer has failed to fully comply with and/or satisfy any of the construction standards and requirements that are contained under this Article III.

3.9 Insurance Requirements During Construction. Prior to the construction of a Facility, the Developer shall obtain and preserve during the construction process a builders risk insurance policy on the Public Facilities for the full cost of replacement at the time of loss. The insurance shall be written in such form as to cover all risks of physical loss, and shall specifically insure against the perils and casualties that are typically covered under a builders risk insurance policy. In addition, Developer shall ensure that all contractors and subcontractors performing the construction work shall procure and maintain adequate workers compensation insurance, employers' liability insurance, business automobile liability insurance and commercial general liability insurance, all of which shall comport with generally accepted industry standards. Developer shall be solely responsible for supervising the work and material provided by the contractors and subcontractors, and shall ensure that the contractors and subcontractors perform the construction work in a reasonable and safe manner. Upon request by the Planning Director, the Developer shall provide the City with a performance and payment bond with respect to the construction work that is performed, and the payment of the cost and expenses that relate thereto. All such costs shall be included in the total cost reimbursement to the provided under Article VI herein.

3.10 Environmental Compliance. The Developer shall not cause or permit any hazardous material to be located upon or under any part of the Development Site that is non-compliant with any federal, state, or local environmental law. For the purpose of this agreement, "hazardous material" shall mean any and all materials or substances that are deemed hazardous, toxic or dangerous under any federal, state, or local statute. The Developer shall indemnify and hold the City harmless from and against any and all losses, liabilities, damages, injuries, costs, expenses (including without limitation reasonable

attorney and consultant fees), claims for damage to the environment, claims for fines or civil penalties, costs of any settlement or judgment, and claims of any and every kind whatsoever, that relate to or arise from the presence of any Hazardous Material on the Development Site.

3.11 Indemnity. The Developer shall indemnify and defend the City (and their respective representatives, officers, employees, agents, insurers, and all successors and assigns), and hold them harmless from and against any and all claims, demands and causes of action that relate to or arise from the development and construction of the Public Facilities, and from any and all damages, losses, judgments, obligations, liabilities, costs and expenses (including investigative, consultant and repair costs, and all legal costs and attorney fees) that result therefrom. This indemnity shall specifically apply to all acts and omissions of the contractors and the subcontractors who perform the construction work, irrespective of any negligence on the part of the City; provided, however, that the Developer shall not be obligated to provide any indemnity for a claim that is solely attributable to the negligence and/or willful misconduct of the City. This indemnity shall remain in full force and effect until all indemnified claims, demands and causes of actions are finally adjudicated, or are otherwise barred by applicable law. The City shall be named as an additionally insured party on all certificates of insurance held by the Developer and/or its subcontractors. The City shall hold copies of all insurance documents for work on the Public Facilities.

3.12 Reimbursement of Costs. The City shall reimburse the Developer the actual total costs that the Developer incurs in the development and construction of the Parking Facility and Parks as defined under Article III, up to the agreed upon not-to-exceed amount; and in the remediation of the Development Site as defined under Article V. The reimbursement to be made under this Section 3.12 shall be subject to the following conditions:

- (a) The Developer shall have fully performed and timely complied with all of the covenants, obligations, requirements, and commitments that are contained under Article III.
- (b) The Developer shall have submitted to the City a duly executed certification by its Chief Executive Officer that provides an itemization of the actual costs that were incurred by Developer in the construction of the Phase I Public Facilities and in the remediation of the Development Site.

3.13 Payment Terms. The reimbursement to be made to the Developer under Section 3.12 shall be paid within 30 days of the execution of the elements listed in 3.12

ARTICLE IV DEVELOPMENT AND CONSTRUCTION OF PHASE II FACILITIES

4.1 General Scope of Development. The Developer shall develop and construct upon Tract 3 of the Development Site the Mixed-Use Facilities that comport with the facilities that are depicted in Appendix "A" to this Agreement. To facilitate the development and construction of those facilities, the City shall convey to the Developer all of its rights, title and interest in and to Tract 3, provided that the Developer has fully complied with all of the preliminary requirements and commitments that are defined under this Article IV.

4.2 Preliminary Requirements and Commitments. The Developer shall fully perform and timely satisfy all of the preliminary requirements and commitments that are provided as follows:

Minimum Design and Building Requirements. The Developer shall ensure that the Phase II Facilities shall be developed and constructed in accordance with the following requirements:

(1) The Mixed-use Facilities shall be constructed along Broadway Street, generally as depicted on the site plan attached herein as Appendix "A". Any substantial changes to the location and the building massing shall be reviewed and approved by the Planning Director.

(2) The Mixed-Use Facilities shall contain approximately 54,000 square feet, composed of residential, commercial and retail space, with the ground floor primarily used for commercial uses. Any substantial changes to the development program shall be reviewed and approved by the Planning Director.

(3) The buildings' exterior design shall be consistent with all existing City design and construction standards, including the City's Downtown Design Standards. The buildings' design shall be reviewed by the Planning Director prior to any formal submissions required under the City's codes and ordinances.

- (a) **Minimum Financial Commitment.** The Developer shall commit and expend approximately \$9 million in the development, construction and completion of the Mixed-Use Facilities. This shall include the costs and expenses of constructing the Facilities, professional fees that are incurred in relation to that development and construction, insurance costs and other construction-related fees, loan fees and costs, and governmental fees and charges that are incurred prior to and during the construction process.
- (b) **Critical Completion/Closing Dates.** The Developer shall comply with the requirements that are defined under this section on or before the completion dates that are ascribed thereto, all of which shall be deemed critical deadlines within the term “time is of the essence”:
- (1) Within 180 days following the Second Effective Date, the Developer shall submit to City staff for its review a revised set of design plans for the Phase II facilities.
- (2) Within 365 days following the Second Effective Date, the City shall convey to the Developer all of its rights, title and interests in and to Tract 3 under the following precedent conditions:
- i. The Developer has submitted evidence of financing commitments for the private components of the project.
 - ii. The Developer has obtained all necessary city permits, licenses, and approvals required under the codes and ordinances of the City to enable construction to begin.
 - iii. The City has submitted evidence that the property is within a state approved Tax Increment Financing District.
 - iv. The City has – or has provided evidence of commitment to bring - all utilities required to support the development, to the site.
- (3) Within 90 days of the transfer of the property, the Developer shall have obtained all necessary permits, licenses, and approvals to initiate construction of the Phase II facilities. The Developer shall thereafter utilize its best efforts to complete the construction work on the Facilities within a period of 18 months following the commencement

date of the work, unless extraordinary conditions arise which are outside of the control of the Developer.

4.3 Payment of Deferred Purchase Price. The parties stipulate and agree that the estimated fair market value of Tract 3 is \$ 155,000, which shall be the designated purchase price of that property, less any costs incurred as specified in Section 5.4. The Developer shall pay to the City the designated purchase price in 5 consecutive equal installments, with the first installment to be due and payable on the sixth anniversary following the Certificate of Occupancy of the Phase I Facilities, with the remaining payments in 4 annual payments each 12 months subsequent to the previous payment.

ARTICLE V DEVELOPER'S ACCEPTANCE OF DEVELOPMENT SITE

5.1 Condition of Development Site. The City has provided the Developer with copies of all environmental studies that were performed on the Development Site, and the findings that were made therefrom. Having reviewed the findings that were made in those studies, the Developer has agreed to accept the Development Site in its present condition, with all existing defects and deficiencies, including defects and deficiencies relating to environmental matters. The conveyance of Tracts 1 and 3 to the Developer, as provided under this Agreement, shall contain a warranty of good title, and a general disclaimer of all warranties regarding the condition, suitability and legal compliance of the properties being conveyed.

5.2 Resubdivision Plat. The City shall, at its sole cost, cause a resubdivision plat to be made of the Development Site that depicts a metes and bounds description of Tracts 1 through 3, and the boundary lines that separate those tracts. The City shall provide the Developer with a copy of the resubdivision plat for its approval and acceptance. Upon receipt of the Developer's written approval, the City shall file a copy of the original subdivision plat with the McCracken County Clerk's office, and pay all filing fees related thereto. All conveyances made on Tracts 1 and 3 shall reference the resubdivision plat, and the depictions of the tracts that are provided therein.

5.3. Remediation of Development Site. The Developer shall assume sole liability for remedying the environmental defects and deficiencies that are noted in the environmental studies, and paying the costs relating thereto. The Developer shall perform all remediation work that may be required by any applicable federal, state and local environmental law in accordance with the procedures and standards that are contained under those laws. Upon

request, the Developer shall provide the City with copies of any and all documentation that relate to the remedial work, and any governmental approvals and permits that were issued thereon.

5.4. Reimbursement of Remediation Costs. Should the Developer be required to perform any remediation work on the Development Site, the City shall reimburse the Developer the actual costs of the remediation as provided under Article VI of this Agreement, up to the equivalent of the purchase price of Tracts 1 and 3. Should the cost of additional remediation exceed this amount, the City and the Developer shall work collaboratively to identify additional sources of funds to be used for remediation. However, should the additional cost of remediation exceed such available funds, neither party shall be bound to the conveyance of the property.

ARTICLE VI MISCELLANEOUS PROVISIONS

6.1 Right of Specific Performance. Each party shall have the right to enforce the terms and provisions of this Agreement, and to obtain the benefits that were accorded to them under this Agreement. In the event a party should fail to faithfully perform any of the covenants, obligations or undertakings that are imposed under this Agreement, or contest any of the understandings that are made under this Agreement, the other party shall have all rights and remedies as provided by law, specifically including the right to obtain specific performance and injunctive relief, and the right to recover any losses, damages, costs and expenses that are incurred by the party as a result of the defaulting party's breach, including their reasonable attorney fees; excepting however, any consequential or incidental damages that a party may incur, all of which are expressly excluded from recovery. Should the Developer fail to construct the Phase I Facilities or the Phase II Facilities after receiving fee title to the tract upon which the Facilities are to be constructed, the City shall have the right to make immediate demand on the payment of the final deferred purchase price that is applicable to that tract, and to collect and recover that amount from the Developer, plus interest at the legal rate of 8% from and after the date of the City's demand.

6.2 Resolution of Disputes. This Agreement shall be construed and enforced in accordance with the laws of the state of Kentucky. In the event of any dispute regarding the interpretation or enforcement of this Agreement, the parties shall attempt to resolve the dispute by negotiation. If the dispute cannot be resolved by negotiation, the parties shall submit the dispute for administered mediation, which shall take place in Paducah, Kentucky. All unresolved disputes shall be submitted to McCracken Circuit Court, which court shall

have exclusive jurisdiction over the dispute. Each party irrevocably attorns to the jurisdiction of that court, and waives all rights to protest that jurisdiction. Each party also waives their right to a jury trial. In any action seeking enforcement of this Agreement, the prevailing party shall be entitled to recover the costs and expenses that they incurred in such action, including their reasonable attorneys' fees.

6.3 Waivers. The waiver by a party of any default or breach of this Agreement shall not constitute a waiver of any other or subsequent default or breach. Each party shall have the right to enforce the provisions of this Agreement in strict accordance with the terms hereof, notwithstanding any prior conduct or custom. The failure of a party to enforce its rights under this Agreement shall not be construed as having created a custom that is contrary to specific provisions of this Agreement, or as having in any way or manner modified or waived such provisions. All rights and remedies of the parties shall be cumulative, and the exercise of one right or remedy shall not be deemed a waiver or release of any other right or remedy.

6.4 Notices. All notices shall be in writing and sent (unless otherwise provided herein) by first class mail, postage prepaid, or personally delivered. Any marked notice shall be deemed to be sent on the day deposited in the mail. Any notice shall be sent to the following addresses:

DEVELOPER:

Attn: Barry Alberts, Managing Director
City Visions Associates/Weyland Ventures
815 W. Market Street #110 Louisville KY 40202
Business phone: 502.561.7885
Email address: balberts@cityvisionassociates.com

CITY:

Attn: Planning Director, City of Paducah
300 S. 5th Street
Paducah KY 42002
Business phone: 270.444.8690
Email address: ttracy@paducahky.gov

6.5 Entire Agreement. This Agreement embodies the entire agreement between the parties with respect to the development of the Development Site. There are no representations, terms, conditions, covenants or agreements between the parties relating thereto that are not contained herein. This Agreement shall completely and fully supersede all other prior agreements, both written and oral, between the parties with respect to the matters addressed herein, including the preliminary agreement that was executed by the parties in April of 2019. This Agreement shall be deemed drafted by both parties, and no ambiguity in the construction of this Agreement shall be resolved against either party by reason of the draftsmanship of this Agreement. The covenants, terms, and conditions and

obligations set forth and contained in this Agreement shall be binding upon and inure to the benefit of Developer and the City, and their respective heirs, successors, and assigns.

6.6 Assignment. The Developer shall not have the right to assign this Agreement, or any of its rights and obligations hereunder, without the City's prior written approval.

6.7 Captions. The article and paragraph headings and captions contained in this Agreement are included for convenience only, and shall not be considered a part hereof or effect in any manner the renovation or interpretation of this Agreement.

6.8 Severability. In the event any provision of this Agreement shall be deemed null and void or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any of the remaining provisions hereof.

6.9 Counterparts. This Agreement may be independently executed in any number of counterparts, each of which, when executed and delivered, shall constitute an agreement that shall be binding upon all parties notwithstanding that the signatures of all parties and/or their designated representatives do not appear on the same page. Facsimile signatures shall have the same effect as original signatures.

WITNESS, our signatures made on the subscribing dates written below.

CITY OF PADUCAH

By: 
Its Mayor

DEVELOPER

By: 
Title: Manager

STATE OF KENTUCKY)

COUNTY OF MCCRACKEN)

The foregoing instrument was acknowledged before me on this 1st day of ~~August~~ ^{September}, 2020, by Brandi Harlowe, Mayor of the City of Paducah, on behalf of said City.

My commission expires 05/21/2024.

Claudia S. Meeks
NOTARY PUBLIC # KYNP 5704

STATE OF KENTUCKY)

COUNTY OF MCCRACKEN)

The foregoing instrument was acknowledged before me on this 21 day of August, 2020, by Mariah Gratz of Weyland Ventures Development, a Kentucky limited liability company, on behalf of said limited liability company.

My commission expires July 13, 2020.

[Signature]
NOTARY PUBLIC ID # KYNP 10654
Nadia S. Herbst-McConnell